

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
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UNITED STATES OF AMERICA

12 Cr. 825 (JGK)

- against -

MARK HOTTON,

MEMORANDUM OPINION &  
ORDER

Defendant.

JOHN G. KOELTL, District Judge:

The defendant brings a motion pursuant to Rule 36 of the Federal Rules of Criminal Procedure to correct a clerical error in his sentence, namely, the failure of this Court to make his sentence run concurrently with a sentence in the Eastern District of New York. However, Rule 36 is not the correct vehicle for such a motion because the error, if there had been one, would not be a clerical motion subject to correction under Rule 36. Rather, the motion would be a motion to amend the sentence under 28 U.S.C. § 2255 for an error in the imposition of the sentence.

However, any error, if there was an error, would not have been committed by this Court because at the time the sentence was imposed by this Court the defendant had not yet been sentenced in the Eastern District of New York.

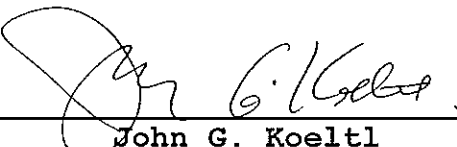
While the Court should not re-characterize this motion as a motion pursuant to § 2255 without the agreement of the petitioner because of the consequences from multiple proceedings under § 2255, see Adams v. United States, 155 F.3d 582, 584 (2d

Cir. 1998) (per curiam), in this case the defendant already has a petition under § 2255 pending in the Eastern District of New York, see Fisher v. Hudson, 665 F. App'x 59, 61-62 (2d Cir. Nov. 7, 2016). Therefore, this Court should transfer this proceeding to the Eastern District of New York for treatment along with the petitioner's § 2255 petition in the Eastern District of New York. See Diallo v. Holmes, 288 F. Supp. 2d 442, 446 (S.D.N.Y. 2003). Whether the defendant and the court in the Eastern District of New York choose to treat this motion as an amendment to the § 2255 petition in the Eastern District of New York is up to the petitioner and the court in the Eastern District of New York.

This motion is hereby **transferred** to the Eastern District of New York with a request that it be transferred to the Judge who is presiding over the petitioner's § 2255 petition in the Eastern District of New York.

**SO ORDERED.**

**Dated:** New York, New York  
December 5, 2017

  
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John G. Koeltl  
United States District Judge